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03/08/19
02:23 PM

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Develop a Successor to Existing Net Energy Metering Tariffs Pursuant to Public Utilities Code Section 2827.1, and to Address Other Issues Related to Net Energy Metering.

Rulemaking 14-07-002

ASSIGNED COMMISSIONER'S RULING REGARDING ENHANCED CONSUMER PROTECTIONS FOR NET ENERGY METERING CUSTOMERS

This ruling solicits comments on enhanced consumer protection measures for customers who take service on a net energy metering (NEM) tariff and for potential NEM customers. Parties submitting comments must file and serve their comments no later than March 29, 2019. Parties may file and serve reply comments no later than April 12, 2019.

This ruling further solicits briefs on parties' positions regarding the authority of the California Public Utilities Commission (Commission or CPUC) over third-party solar providers. Parties submitting briefs must file and serve their briefs no later than April 12, 2019. Parties may file and serve reply briefs, no later than April 22, 2019.

1. Background

In Decision (D.) 16-01-044, the Commission adopted basic consumer protections for NEM customers, including a minimum 10-year system warranty and a California Energy Commission (CEC) certified equipment list previously required under the California Solar Initiative (CSI) and the Self-Generation

Incentive Program (SGIP). D.16-01-044 also directed Energy Division staff to work with parties to develop an information packet for utility customers considering installing solar rooftop energy systems. Energy Division staff held a workshop in October 2016, and the assigned Administrative Law Judge (ALJ) subsequently solicited comments on consumer protection and related issues.

Following parties' comments, the State Legislature enacted Assembly Bill (AB) 1070 (Stats. 2017, Chap. 662),¹ requiring several consumer protection measures, including:

- Solar Energy System Disclosure Document: The Contractors State License Board (CSLB), in collaboration with the CPUC, must develop a Solar Energy System Disclosure Document (Solar Disclosure Document) by July 1, 2018. The Solar Disclosure Document must provide accurate, clear, and concise information regarding the installation of a solar energy system, total costs of installation, anticipated savings, the assumptions and inputs used to estimate the savings, and the implications of various financing options.² The CSLB posted a cover page of the Solar Disclosure Document in English and Spanish to its website on June 29, 2018, and CSLB staff obtained authorization from its Board to host stakeholder meetings to assist in the drafting of the remainder of the Solar Disclosure Document.³

¹ Full text is available at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1070.

² California Business and Professions Code Section 7169(a).

³ <http://www.cslb.ca.gov/contractors/SolarSheet.aspx>. CSLB staff developed a draft Solar Energy System Disclosure document with input from Commission staff. Per AB 1070's requirements, the cover page of the Solar Disclosures Document is intended to comply with California Business and Professions Code Section 7169(b). The Commission approved Resolution M-4836 "Endorses CPUC Staff's Collaboration with the CSLB to draft Consumer Disclosures required by AB 1070 (2017)," at its regularly scheduled business meeting on August 23, 2018.

Footnote continued on next page

- Standardized inputs and assumptions: The CPUC must develop standardized inputs and assumptions to be used in the calculation and presentation of electric utility bill savings to consumers by July 1, 2019.

The State Legislature also enacted AB 1284 (Stats. 2017, Chap. 475) and Senate Bill (SB) 242 (Stats. 2017, Chap. 484),⁴ which established a regulatory framework and specific consumer protection measures for property assessed clean energy (PACE) financing to be administered by the Department of Business Oversight (DBO), including:

- Underwriting standards: Current underwriting standards for PACE financing must be standardized based on home equity and on-time mortgage and tax payment history. The most accurate Automated Valuation Models must be used for establishing home value. New underwriting standards include an evaluation of a property owner's ability to pay, to determine that property owners can meet their annual PACE obligation in addition to their current debt obligations and basic household expenses.
- Telephone confirmation for all homeowners: PACE program administrators are required to call every property owner to confirm the homeowner acknowledges and agrees to the key terms of their PACE financing prior to the commencement of work on the property.
- Right to cancel: Homeowners have a three-day right to cancel their PACE assessment after they sign their contract.
- Marketing standards: PACE Program administrators are prohibited from compensating contractors beyond the cost of the home improvement project, and may not pay incentives to property owners in exchange for PACE financing.

⁴ Full text available here:

AB 1284 http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1284;

SB 242 http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB242.

- New reporting requirements: PACE program administrators are required to report data to local government partners, including estimates on energy and water savings, local economic and job impacts, and the types of products installed and age demographics of homeowners served.

On July 10, 2018, the Commission held a public forum in Huron, California for local community members to share concerns, learn about current consumer protections, and identify ways to improve protections. Pacific Gas and Electric Company (PG&E) filed and served a final report that summarizes the forum discussion.⁵

Based on party comments filed in early 2017, State regulations adopted in 2017, and the Huron public forum, the Commission adopted further consumer protection measures in D.18-09-044, including:

- A process for developing and disseminating a solar customer information packet.
- Required modifications in the electric utilities' interconnection portals to require, for each NEM interconnection application:
 - Selection by the interconnection applicant of a specific CSLB license number from a regularly updated drop-down list of valid CSLB licenses.
 - An uploaded copy of a signed Solar Disclosure Document.
 - An uploaded copy of a signed customer information packet.
- A process for developing a more standardized solar complaint tracking across agencies that receive solar customer complaints, including the electric utilities, CPUC, CSLB and DBO.

⁵ *Final Report of PG&E on the Solar Consumer Protection Forum held on July 10, 2018, pursuant to Ruling of ALJ Kao*, filed August 31, 2018.

Acknowledging the measures adopted in D.18-09-044 may not address all NEM consumer protection issues, the Commission continued to focus on customer abuses reported during and subsequent to the Huron forum. In November 2018, a Joint Solar Agency Task Force, consisting of staff from the CPUC, CSLB and DBO, met to consider options to provide relief for current solar customers harmed by companies' unfair business and lending practices, misleading or false advertising, aggressive or abusive marketing, poor quality installation, and poor customer service; and to seek policy solutions for preventing future abuses. The three state agencies decided to establish a formal working relationship and began drafting a Joint Investigation/Confidentiality Agreement to be finalized in the first quarter of 2019.

Although substantial work is currently underway to better understand the nature and magnitude of specific consumer protection issues, the earliest we can anticipate such information from CSLB might be July 1, 2019, when the CSLB may publish the first annual report documenting solar consumer complaints.⁶ We seek parties' input more immediately, in the interest of proactively considering protections for vulnerable customers (*e.g.*, low-income customers, seniors, limited English proficiency populations, individuals with disabilities such as cognitive impairment) from the most potentially harmful abuses.

2. Comments on Enhanced Consumer Protection Measures

This ruling invites parties to file and serve comments responsive to the following issues/questions.

1. Identify advantages and disadvantages of specific consumer protection measures that have been previously raised or recommended, as listed below. For each measure: identify the specific consumer risk(s) or type(s)

⁶ California Business and Professions Code Section 7170.

of consumer risk the measure could address; describe in as much detail as possible how best to implement the measure; and/or identify specific challenges and other considerations that should be accounted for in the process of implementation. Identify the appropriate entity/entities (CPUC, CSLB, DBO, local District Attorneys' offices, or others) that should implement each measure. If new or incremental funding is likely needed, identify potential appropriate funding source(s). Also identify whether any recommended measure requires the Commission to exercise authority over third-party solar providers.

- a. Establishing an administrative penalty mechanism.
Note that penalties may be non-monetary, for instance a requirement that the installer disclose past infractions to potential buyers. Identify specific business or marketing practices for which penalties should be established and identify/describe an appropriate penalty for each such practice.
- b. Establishing an independent consumer advocate or consumer clearinghouse. Identify the specific role and function(s) best served by such an entity, and accordingly what authorization(s) this entity may need in order to effectively carry out its designated functions. Also describe how best to establish/designate such an entity, and whether and how to monitor/oversee the conduct of such an entity.
- c. Developing and maintaining a list of "approved" solar providers; only NEM interconnection applications involving "approved" solar providers would be eligible for NEM interconnection approval. Alternatively, if a "blacklist," *i.e.*, a list of prohibited providers were to be developed, NEM interconnection applications would be automatically rejected if the solar provider's status is "blacklisted." Address whether and how a solar provider should have the opportunity to appeal a determination on its status as *not* "approved," or "blacklisted."

2. In addition to the proposed measures addressed in Question 1, identify and describe specific risks that may prevail or that may be more effectively addressed by alternative measures. For example, an unlicensed contractor that installs panels but does not apply for utility interconnection may face prosecution for unfair or fraudulent business practices, but financial recourse for the affected customer(s) is not guaranteed.

For each specific risk, identify specific alternative measure(s) that could effectively address the risk, and describe in as much detail as possible how best to implement the measure. Identify the appropriate entity/entities (CPUC, CSLB, DBO, local District Attorneys' offices, or others) that should implement each measure. If new or incremental funding is likely needed, identify potential appropriate funding source(s). Also identify whether any recommended measure requires the Commission to exercise authority over third-party solar providers.

3. In consideration of limited resources, the relative severity of risks, and the likely benefit-cost ratio of each measure, suggest a prioritization of (or describe how the Commission should prioritize) the measures addressed in response to Questions 1 and 2.
4. In D.18-02-002 the Commission adopted a number of consumer protection measures for core transport agents,⁷ several of which are listed below. Address whether and which of the consumer protection measures adopted in D.18-02-002 merit extension to solar providers, how best to implement and enforce each such measure, and/or identify specific challenges and other considerations that should be accounted for in the process of implementation.
 - A process for the issuance of a public alert concerning companies attempting to provide core transport service in an unauthorized or fraudulent manner.

⁷ Core transport agents" are third party natural gas procurement service providers.

- Rules to implement minimum standards that core transport agents must adhere to in their interactions with customers.
 - A process and rules for a “do not call” list, to prevent core gas customers from being solicited by telephone to change their core transport agent.
5. Identify advantages and disadvantages of establishing a restitution fund for customers that have been financially harmed by solar providers’ unfair business and financing practices. Identify practical considerations the Commission should consider, including determination of an appropriate funding source, the initial amount to be funded, eligibility criteria for receiving financial relief from the restitution fund, determination of appropriate restitution amounts, and other implementation details.
 6. Identify and describe any additional issues or factors the Commission should consider in determining whether to adopt, and how to implement, additional consumer protections for NEM customers.

3. Legal Briefs

Parties may each file and serve briefs stating their position on the Commission’s authority over third-party solar providers. If a party’s recommendations (regarding enhanced consumer protection measures) involve the Commission exercising authority over solar providers, for instance to include prohibitions against unfair and fraudulent business practices by solar providers as a condition of the NEM interconnection agreement, the party must file and serve a brief identifying specific statutes and/or Commission decisions conferring such authority. Parties arguing against the Commission’s exercise of authority over solar providers, and/or asserting limitations on the Commission’s authority over solar providers, must file a brief identifying specific statutes and/or Commission decisions that specifically state such limitations or

prohibitions, or otherwise provide such limitations or prohibitions. Parties may each file and serve reply briefs.

IT IS RULED that:

1. Parties submitting comments in response to Section 2 of this ruling must file and serve their comments no later than March 29, 2019. Parties may file and serve reply comments, no later than April 12, 2019.

2. Parties submitting briefs in response to Section 3 of this ruling must file and serve their briefs no later than April 12, 2019. Parties may file and serve reply briefs, no later than April 22, 2019.

Dated March 8, 2019, at San Francisco, California.

/s/ MARTHA GUZMAN ACEVES

Martha Guzman Aceves
Assigned Commissioner